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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 239

ROY ISAACS, S. M. ROOF, LOAL C. WILSON and J. V. GARRETT,
Petitioners,

VERSUS

THE CITY OF OKLAHOMA CITY, a municipal corporation, URBAN RENEWAL AUTHORITY, GRANVILLE TOMERLIN, Chairman, F. D. MOON, Vice Chairman, C. KENNETH WOODWARD, Secretary, RUEBEN G. MARTIN, member, RALPH L. BOLEN, member, JAMES T. YIELDING, Executive Director, TULSA URBAN RENEWAL AUTHORITY, a purported public body corporate of Tulsa, Oklahoma, and its officers and members, LEEMAN NIX, Chairman, ROBERT LAIRD, Vice Chairman, MURRAY MCCUNE, member, PAUL CHAPMAN, Executive Director and Secretary, and THE CITY OF TULSA, OKLAHOMA, a municipal corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

Petitioners seek to obtain review of the decision of the Supreme Court of the State of Oklahoma upholding the constitutionality of the Oklahoma Urban Redevelopment Law. 11 Okla. Stat. §§ 1601-1620.

Initially, separate actions for declaratory judgments challenging the validity of the Urban Redevelopment Law

were filed in the District Courts of Oklahoma County and Tulsa County respectively. From judgments of both District Courts upholding the validity of the Urban Redevelopment Law, the cases were appealed to the Supreme Court of the State of Oklahoma. The Oklahoma Supreme Court consolidated the cases because of the similarity of issues, and subsequently affirmed the judgments of the District Courts.

The provisions of the Urban Redevelopment Law apply to all incorporated cities of Oklahoma in excess of 100,000 population. 11 Okla. Stat. § 1602. The powers conferred by this legislation may be invoked as provided in 11 Okla. Stat. § 1607, which in its entirety reads as follows:

> "Resolution by Local Governing Body: (a) No Urban Renewal Authority created by this Act shall exercise the authority or powers granted by this Act until after the local governing body shall have determined by resolution that such action is in the public interest and elects to have such authority or powers exercised by the Urban Renewal Authority if one exists or is subsequently established. (b) No incorporated city shall exercise the authority granted by this Act until after the local governing body shall have adopted a resolution finding that: (1) One or more blighted areas exist in its area of operation, and (2) The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals and welfare of the residents of such area."

Subsequent acts were passed by the Legislature applying to cities having populations between 10,000 and 100,000, and cities with populations under 10,000, which acts were identical to the Urban Redevelopment Law except that

an additional requirement for invoking powers under the later acts was provided, which reads as follows:

> "No incorporated city shall exercise the authority granted by this Act until a majority of the qualified property tax-paying voters thereof who vote at an election to be held for that purpose shall have approved the same." 11 Okla. Stat. § 1707.

The Urban Redevelopment Law, later codified as 11 Okla. Stat. §§ 1601 through 1620, was adopted as an emergency measure and was approved on April 7, 1959 (Session Laws, 1959, Chapter 38, pp. 61-77).

Subsequently, the Legislature enacted the Urban Redevelopment Act, later codified as 11 Okla. Stat. §§ 1651 through 1670 (Session Laws, 1959, Chapter 36, pp. 43-60), applicable to cities between 10,000 and 100,000 population. The Urban Redevelopment Act was not enacted as an emergency measure. It was approved on June 23, 1959 and did not become effective until October 1, 1959, which was ninety days after the Legislature adjourned *sine die* July 3, 1959.

The third urban renewal law, applicable to cities of 10,000 population or less, was passed some two years later and is known as the Urban Redevelopment Act of 1961. This legislation is codified as 11 Okla. Stat. §§ 1701 through 1718.

Only the Urban Redevelopment Law, applicable to cities in excess of 100,000 population and which was the first of three schemes of legislation, is challenged in this action. The subsequent legislation permitting redevelopment programs in smaller cities is not in issue.

SUMMARY

Petitioners seek review of the Oklahoma Supreme Court decision upholding the validity of the Oklahoma Urban Redevelopment Law. They assert that the Urban Redevelopment Law, which applies to cities in excess of 100,000 population, violates the "due process" and "equal protection" clauses of the Fifth and Fourteenth Amendments and contravenes the prohibition against special legislation by the Oklahoma Constitution. These contentions pose no issue warranting review by this Court.

The Urban Redevelopment Law was the first of three complete and separate statutory schemes to be enacted by the state legislature. The legislative objective of urban renewal is a sound purpose. *Berman* v. *Parker*, 348 U.S. 26. The legitimacy of the legislative purpose is not questioned by petitioners.

That the Legislature chose first to address itself to the problems of the larger cities (those of more than 100,000 population) does not pose an issue for resolution by this Court. It is clear that blight and deterioration exist in the larger cities, while it may or may not be present in smaller municipalities. Thus, neither the Legislature's determination to use the police power to attack the problems of the larger cities *first* nor its decision regarding implementation (which was entrusted to the governing bodies of the cities) lack rational justification. Consequently, there is no real issue as to the constitutionality of the Urban Redevelopment Law.

Subsequent passage of the acts permitting smaller municipalities to exercise redevelopment powers only upon

affirmative majority vote of qualified property tax-paying voters does not affect the validity of the Urban Redevelopment Law. The reasonableness of the population classification is not disturbed since these later acts are separate and complete schemes of legislation, intended to treat the possible presence of blight in the smaller towns. The validity of the two later acts is not challenged.

It follows that no real question justifying review by this Court is presented.

REASONS FOR DENYING THE WRIT

I

PETITIONERS' CHALLENGE OF THE URBAN REDEVELOPMENT LAW OF OKLAHOMA, WHICH IS APPLICABLE ONLY TO CITIES IN EXCESS OF 100,000 POPULATION, PRESENTS NO SUBSTANTIAL "DUE PROCESS" OR "EQUAL PROTECTION" ISSUE.

The sole challenge in this case is directed to the validity of the Urban Redevelopment Law of Oklahoma, which applies to cities in excess of 100,000 population. Petitioners seek, by writ of certiorari, to obtain review by this Court of issues which have been previously well considered and are long settled. A review of the pertinent cases demonstrates that significant issues of "due process" or "equal protection" asserted by the petitioners are not present, and there is, therefore, no reason for granting the writ.

It is now well settled in law that urban renewal or community redevelopment is a valid public purpose, and is, therefore, a proper legislative objective within the purview of the police power of the state. *Berman* v. *Parker*, 348 U.S. 26. In the *Berman* case, this Court applied the

general rule that when the Legislature has spoken, subject to specific constitutional limitations, public interest has been declared in terms well-nigh conclusive. In other words, when Congress or a state legislature has declared a public purpose, the decision is entitled to deference until it is shown to involve an impossibility. The Legislature is the primary guardian of the public interest and the role of the judiciary in ascertaining whether or not the police power is being exercised for a public purpose is an extremely narrow one. *U. S. ex rel. Tennessee Valley Authority* v. *Welch*, 327 U.S. 546; *Old Dominion Land Company* v. *U. S.*, 269 U.S. 55.

Here, the purpose of Oklahoma's Urban Redevelopment Law is not dissimilar from that of the urban redevelopment legislation under attack in the *Berman* case. The aim of both is to eliminate slums and blight from urban areas, and prevent future re-occurrence of these conditions. It is incontestable that the effects of these conditions place a heavy burden on the public welfare. Therefore, it is clear that the object of this legislation constitutes a valid public purpose, and as such, it is within the scope of the state's police power. Once the public purpose has been established, the means of executing the project are for the Legislature and it alone to determine. *Berman* v. *Parker, supra; Luxton* v. *North River Bridge Co.*, 153 U.S. 525; *Highland* v. *Russell Car and Snowplow Co.*, 279 U.S. 253.

There is no reasonable doubt that the determination of the Legislature to classify urban renewal programs on the basis of population is proper. The Urban Redevelopment Law, applicable to cities in excess of 100,000 popu-

lation, is challenged on the ground that this population classification violates both the due process and equal protection clauses of the Fourteenth Amendment of the Constitution. The law in this area is well-settled and free from substantial dispute. The requirements of due process interpose a bar only if the statute manifests a "patently arbitrary classification, utterly lacking in rational justification." *Flemming* v. *Nestor*, 363 U.S. 603. Further, it is only legislative classifications based on "invidious discrimination" that offend the equal protection guarantee of the Constitution. *Ferguson* v. *Skrupa*, 372 U.S. 726. Where there is any conceivable rational relationship between the legislative classification and attainment of a proper public purpose, the enactment will be sustained. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483; *State of Ohio ex rel. Clarke* v. *Deckebach*, 274 U.S. 392.

This Court has long adhered to the rule that the application of a law to a locality by population classification is not invalid unless the classification is purely arbitrary, oppressive or capricious. *Radice* v. *New York*, 264 U.S. 292; *Packard* v. *Banton*, 264 U.S. 140; *Hayes* v. *Missouri*, 120 U.S. 68.

At the time of its adoption, the Oklahoma Urban Redevelopment Law, applying to cities of over 100,000 population, was the *only* state legislation relating to urban redevelopment. Thus, the sole question presented in this dispute is whether there was a reasonable basis to support the legislative determination to restrict the application of urban renewal to cities exceeding 100,000 population.

It is common knowledge that problems of slums and blight exist in heavily populated metropolitan areas,

whereas, such problems may or may not be prevalent in smaller communities. It is equally clear that it is the prerogative and responsibility of the Legislature to determine the manner and extent of eliminating social evils through reform measures. In *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, this Court stated:

> "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same filed may be of different dimensions and proportions, requiring different remedies. Or so the Legislature may think. *Tigner* v. *State of Texas*, 310 U.S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problems which seems most acute to the legislative mind. *Semler* v. *Oregon State Board of Dental Examiners*, 294 U.S. 608. The Legislature may select one phase of one field and apply a remedy there, neglecting the others. *A.F. of L.* v. *American Sash Co.*, 335 U.S. 538. . . ."

See to the same effect *Katzenbach* v. *Morgan*, 384 U.S. 641. The Oklahoma Legislature chose to first address itself to those areas of the state most acutely in need of urban redevelopment. It is submitted that this was a reasonable exercise of legislative discretion.

The petitioner has failed to cite a single instance in which the judiciary has rejected a legislatve population classification in implementing a program designed to eliminate slums or substandard housing. In fact, such population classifications have been universally sustained by the courts. See, *e.g.*, *Foeller* v. *Housing Authority of Portland*, 198 Ore. 205, 256 P.2d 752 (1953). *State ex rel. Porterie* v. *Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938), *Krause* v. *Peoria Housing Authority*, 370 Ill. 356,

19 N.E.2d 193 (1939). In sustaining an urban renewal act applying only to cities having a population of more than 75,000, the Kansas Supreme Court in *State ex rel. Fatzer* v. *Urban Renewal Agency of Kansas City,* 179 Kan. 435, 296 P.2d 656 (1956) stated:

> "It is a matter of common knowledge that as cities become more populous they are more subject to slum and blighted areas which are injurious to the public health, safety, morals, and welfare of the residents, and in our opinion the population of a city furnishes a legitimate ground for a classification and differentiation such as that contained in the act under consideration. . . ." 296 P.2d at page 659.

Thus, the determination of the Oklahoma Legislature to apply urban renewal initially only to cities in excess of 100,000 population represents a reasonable exercise of legislative discretion, *and does not* present a "due process" or "equal protection" issue.

II

LEGISLATIVE APPROVAL OF SUBSEQUENT ACTS PERMITTING REDEVELOPMENT PROGRAMS IN SMALLER CITIES ONLY UPON MAJORITY VOTE OF THE "QUALIFIED PROPERTY TAX PAYING VOTERS" DOES NOT AFFECT THE VALIDITY OF THE EARLIER LAW.

The petitioner also asserts that the Urban Redevelopment Law must be considered collectively with subsequent acts extending urban redevelopment to cities of smaller population. See 11 Okla. Stat. §§ 1651-1670; 11 Okla. Stat. §§ 1701-1718. This subsequent legislation was identical to the Urban Redevelopment Law except that a favorable vote of the qualified property tax-paying voters of the

smaller cities was required prior to its implementation. Since the Legislature recognized that the need to eliminate slums or congested housing may not be imperative in smaller municipalities, it included the vote provision as a logical additional requirement for invoking redevelopment powers. Consequently, the fact that smaller communities are required to vote on the desirability of invoking urban renewal powers is not unreasonable or arbitrary. *City of Kansas City* v. *Robb*, 183 Kan. 834, 332 P.2d 520 (1958), involved the resolution of an issue substantially identical to that presented herein by the petitioner. An act authorizing the issuance of general obligation bonds in support of urban renewal programs was challenged as being unconstitutional. The basis of the challenge was that an election was required prior to issuance of the bonds in cities with less than 125,000 population, but such a bond election was unnecessary, except upon a protest petition, in cities exceeding 125,000 population. In sustaining the act, the Court stated:

> ". . . Certainly, the expense and delay of holding bond elections in larger cities and the greater need and urgency for urban renewal action justifies a classification on the basis of population which, in this case, has a real and substantial relation to the purpose of the statute. It is conceivable that differences of opinion may exist in small cities as to whether slums and blighted areas are present thus making population a legitimate ground for classification and differentiation with respect to holding elections, to issue bonds, to undertake and carry out urban renewal projects. . . ." 332 P.2d at page 523.

See also *Frazer* v. *Carr*, Tenn., 360 S.W.2d 449 (1962).

The burden of showing the classification adopted by the Legislature is unconstitutional rests upon the petitioner. *Morey* v. *Doud*, 354 U.S. 457; *Lindsley* v. *Natural Carbonic Gas Company*, 220 U.S. 61; *Lawrence* v. *State Tax Commission*, 286 U.S. 276. The petitioners have totally ignored the fact that the problem of slum clearance and rehabilitation is of peculiar magnitude in large cities but may or may not be of equal concern in smaller communities. There is a real and substantial justification for the voting distinction between cities over and under 100,000 population. The Legislature is aware of the existence of slums in cities over 100,000 population and there is no logical basis for an expensive, time-consuming election, whereas in smaller cities there may be a reasonable basis for disagreement upon the need for redevelopment and the elections are not as expensive and cumbersome.

It should be observed that the petitioner also challenges the validity of the Oklahoma Urban Redevelopment Law as "special or local" legislation prohibited by Article V, §§ 32, 46, and 49 of the Oklahoma Constitution. The assertion that a state statute contravenes provisions of a state constitution does not present a federal question for review by this Court. *Brinkerhoff-Faris Trust and Savings Company* v. *Hill*, 281 U.S. 683; *Live Oak Water Uses' Association* v. *Railroad Commission of State of California*, 269 U.S. 354. In any event the test for measuring the validity of alleged "special or local" legislation under the Oklahoma Constitution is the same as that applied to test alleged discrimination under the equal protection clause of the Fourteenth Amendment of the United States Constitution. If there is any reasonable basis for the classifi-

cation, the legislation will be sustained. *Lowden* v. *Oklahoma County Excise Board*, 186 Okla. 706, 100 P.2d 448 (1940).

The Oklahoma Urban Redevelopment Law either viewed alone or considered collectively with other legislation enacted on the subject of urban redevelopment presents no Fourteenth Amendment issue for determination.

CONCLUSION

The strong rational basis for the Oklahoma Legislature's decision to attack *first* the problems of blight in the larger cities and to entrust the implementation of redevelopment powers to the governing bodies of those cities precludes any serious question of the validity of the Urban Redevelopment Law.

Respondents pray that the petition for writ of certiorari be denied.

Respectfully submitted,

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